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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1474

BENJAMIN H. ADAMOWSKI, ET AL.,
Petitioners,

vs.

GEORGE W. JAYNE,
Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

In answer to the Petition of Benjamin H. Adamowski, et al. for Writ of Certiorari to the Appellate Court of Illinois, First District, Respondent, George W. Jayne, says:

THE SUPREME COURT OF THE UNITED STATES HAS NO JURISDICTION HEREIN, AS THE CASE WAS DECIDED BY THE APPELLATE COURT OF ILLINOIS ON AN INDEPENDENT STATE GROUND.

George W. Jayne, as Plaintiff, filed an action in the Circuit Court of Cook County, Illinois, against the County of Cook. During the pendency of the action, Benjamin H. Adamowski, et al., were not parties to the proceeding and did not at any time seek to intervene therein. After judgment was entered, Benjamin H. Adamowski, et al., *complete strangers to the record*, filed a notice of appeal, and

the Appellate Court of Illinois, First District, dismissed the appeal on the Illinois State ground that they were not parties to the record and, therefore, had no right to appeal. A petition for leave to appeal from the Appellate Court of Illinois, First District, to the Supreme Court of Illinois was denied. No opinion was written by either court.

At no time did Benjamin H. Adamowski, et al., petitioners herein, raise any federal question, nor was any federal case or statute ever cited or referred to in the proceedings in the Illinois courts.

The only power that the Supreme Court of the United States has over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. *Herb* v. *Pitcairn,* 324 U. S. 117 (1945). It is essential to the jurisdiction of the Supreme Court of the United States in reviewing a decision of a state court that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that the federal question was actually decided or that the judgment as rendered could not have been given without deciding it. *Southwestern Bell Telephone Co.* v. *Oklahoma,* 303 U. S. 206 (1938); *Cardinale* v. *Louisiana,* 394 U. S. 437 (1969); *Street* v. *New York,* 394 U. S. 576 (1969). The Supreme Court of the United States will not review a state court decision resting on an adequate and independent non-federal ground even though the state court also may have summoned to its support an erroneous view of federal law; and where the judgment of the state court rests on two grounds, one involving a federal question and the other not, and the ground independent of a federal question is sufficient in itself to sustain it, the Supreme Court of the United States will not take jurisdiction. *Radio Station WOW Inc.* v. *Johnson,* 326 U. S. 120

(1945); *Henry* v. *Mississippi*, 379 U. S. 443 (1964); *Jankovich* v. *Indiana Toll Road Commission*, 379 U. S. 487 (1965).

Where the highest court of the state delivers no opinion and it appears that the judgment might have rested upon a non-federal ground, the Supreme Court of the United States will not take jurisdiction to review the judgment. *Stembridge* v. *Georgia*, 343 U. S. 41 (1952).

Thus, where a federal constitutional question was raised in an Illinois trial court and an appeal was thereafter prosecuted to the Appellate Court of Illinois instead of to the Supreme Court of Illinois (which procedure under Illinois practice waived federal as well as state constitutional questions) such procedure also constituted a waiver of the federal constitutional question as to review by the Supreme Court of the United States. *Central Union Co.* v. *Edwardsville*, 269 U. S. 190 (1925); *Pennsylvania Rail Road Co.* v. *Illinois Brick Co.*, 297 U. S. 447 (1936); *Parker* v. *Illinois*, 333 U. S. 571 (1948). This is precisely what the Supreme Court of the United States decided in the last three cited cases, wherein review was sought from judgments of Illinois courts.

CONCLUSION.

From the above stated set of facts herein involved, it is crystal clear that the decision of the Illinois courts in the case at bar was based on an independent state ground. Therefore, the United States Supreme Court has no jurisdiction herein, as shown by the authorities discussed above.

For these reasons, the Petition for Certiorari to the Appellate Court of Illinois, First District, should be denied.

Respectfully submitted,

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